

BILL NO. S-92-04- 37

SPECIAL ORDINANCE NO. S- 90-92

AN ORDINANCE approving SEWER
CONTRACT 921-91, TIMBERS DRIVE
SANITARY SEWER between CROSBY
EXCAVATING, INC. and the City of
Fort Wayne, Indiana, in connection
with the Board of Public Works.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL
OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That SEWER CONTRACT 921-91, TIMBERS
DRIVE SANITARY SEWER by and between CROSBY EXCAVATING,
INC. and the City of Fort Wayne, Indiana, in connection
with the Board of Public Works, for:

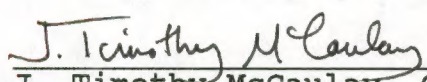
beginning at an existing manhole
located 20± LF East of the
centerline intersection of Sand
Point Road and Timbers Drive;
thence East 400± LF to a proposed
manhole located 35± LF South and
420± LF East of the centerline
intersection of Sand Point Road and
Timbers Drive; said sewer shall be
8" in diameter;

the contract price is Twelve Thousand Eight Hundred Seven
and no/100± Dollars (\$12,807.00±), all as more
particularly set forth in said Contract, which is on file
in the Office of the Board of Public Works and, is by
reference incorporated herein, made a part hereof, and is
hereby in all things ratified, confirmed and approved.
Two (2) copies of said Resolution are on file with the
Office of the City Clerk and made available for public
inspection, according to law.

SECTION 2. That this Ordinance shall be in full
force and effect from and after its passage and any and
all necessary approval by the Mayor.


Council Member

APPROVED AS TO FORM
AND LEGALITY


J. Timothy McCaulay, City Attorney

SEWER CONTRACT 921-91
"TIMBERS DRIVE SANITARY SEWER"

BOARD ORDER NO. 85-91

WORK ORDER NO. 73848

THIS CONTRACT made and entered into this 15 day of APRIL 1992, by and between **CROSBY EXCAVATING INC.**, hereinafter called **CONTRACTOR**, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Public Works & Safety, herein called **OWNER**;

WITNESSETH, that the **CONTRACTOR** and the **OWNER**, for the considerations hereinafter named, agree as follows:

ARTICLE I: SCOPE OF WORK

CONTRACTOR shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following:

Beginning at an existing manhole located 20 ± LF East of the centerline intersection of Sand Point Road and Timbers Drive; thence East 400 ± LF to a proposed manhole located 35 ± LF South and 420 ± LF East of the centerline intersection of Sand Point Road and Timbers Drive; said sewer shall be 8" in diameter;

all according to Timbers Drive Sanitary Sewer Drawing No. SY11271, Sheets 1 & 2, and do everything required by this contract and the other documents constituting a part hereof.

ARTICLE 2: THE CONTRACT PRICE

The **OWNER** shall pay **CONTRACTOR** for the performance of the contract the unit price sum of Twelve Thousand Eight Hundred Seven and NO/100 (\$12,807.00) Dollars. In the event the amount of work is increased or decreased by **OWNER**, the contract sum shall be increased or decreased according to the unit price schedule set forth in the **CONTRACTOR'S** proposal.

ARTICLE 3: PROGRESS PAYMENTS AND RETAINAGE

The **CONTRACTOR** may submit requests for payments no more often than every thirty (30) days for work performed and accepted under the contract. If the contractor is in compliance with the provisions of the contract, the Board will make payments for such work performed and completed. However, in any such case, the Board will retain ten (10%) percent of the total amount owing to insure satisfactory completion of the contract and to insure contractor's compliance with the E.B.E. Rider attached

to this contract. Payments to the contractor are not to exceed 90% of the total contract amount until the OWNER has verified that the CONTRACTOR has made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider attached hereto.

If the contract is in excess of \$100,000 the contract will be subject to the standard Board of Public Works escrow agreement. However, payment of the final 10% of the total contract amount will be dependent upon good faith efforts to comply with the E.B.E. Rider, and subject to appropriate reduction in the event of non-compliance, as provided in paragraph 6 of the E.B.E. Rider attached hereto.

ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract, including the E.B.E. Rider, is fully performed. Payments to the CONTRACTOR are not to exceed 90% of the total contract amount until the OWNER has verified that the CONTRACTOR has made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider attached hereto.

Upon filing of a Completion Affidavit by the CONTRACTOR that the work is ready for final inspection and acceptance, the Board of Public Works will direct the Engineering Department of the OWNER to promptly make such inspection, and will direct the Contract Compliance Department of the OWNER to make a final recommendation on whether the CONTRACTOR made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider.

When the Engineering Department finds the work acceptable under the contract and the contract is fully performed, it shall so inform the Board of Public Works. Likewise, when the Contract Compliance Department determines that the CONTRACTOR'S efforts constitute good faith efforts to attain the E.B.E. goal as agreed in the E.B.E. Rider, it shall so inform the Board of Public Works through an E.B.E. Compliance Final Report.

Upon receiving both the Engineering Department's and the Contract Compliance Department's recommendations, the Board of Public Works shall issue a final certificate stating that the work provided for in this Contract has been completed and accepted, and further stating that the E.B.E. Rider goal has been met. Thereupon the entire balance of the contract sum shall be due and payable to the CONTRACTOR; provided only that the CONTRACTOR shall first furnish OWNER, if requested to do so, satisfactory evidence that all persons who have supplied labor, material or equipment for the work have been fully paid, and all required manpower utilization reports for this project have been submitted.

In the event that the Board of Public Works determines that good faith compliance with the E.B.E. Rider has not occurred, appropriate reduction in the final payment will be made pursuant to paragraph 6 of the E.B.E. Rider attached hereto. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and CONTRACTOR agrees to accept the reduced amount as full payment under the terms of his/her contract.

If the contract is in excess of \$100,000 the contract will be subject to the standard Board of Public Works escrow agreement. However, payment of the final 10% of the total contract amount will be dependent upon good faith efforts to comply with the E.B.E. Rider, and subject to appropriate reduction in the event of non-compliance, as provided in paragraph 6 of the E.B.E. Rider attached hereto.

ARTICLE 5: WORKMEN'S COMPENSATION ACT

The **CONTRACTOR** will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with the Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.

Any judgment rendered against the City of Fort Wayne in any suits for damages or injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of **CONTRACTOR**, or its agents, employees or workmen or any judgment of any court or award of any Board of Arbitrators or of the Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation for accidental injuries or death suffered by his employees or the employees of any subcontractor or subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said **CONTRACTOR**, shall be conclusive against **CONTRACTOR** as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that **CONTRACTOR** indemnify and hold harmless **OWNER** in the premises.

ARTICLE 6: NON-DISCRIMINATION OF LABOR

The **CONTRACTOR** further agrees to be bound by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana, as General Ordinance No. G-34-78 (as amended) on December 12, 1978. The successful bidder shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after completion of construction or upon request of the Office of Compliance.

ARTICLE 7: PREVAILING WAGE SCALE

The **CONTRACTOR** agrees to pay, and also require of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the Statutes of the State of Indiana, and the Ordinances of the City of Fort Wayne, according to the applicable wage scale as included in the bid documents.

ARTICLE 8: COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

- a. Advertisement for Bids, for Contract No. 921-91
- b. Instructions to Bidders for Contract No. 921-91
- c. Contractor's Proposal dated 3-18-92
- d. Fort Wayne Engineering Department Drawing #SY-11271
- e. Supplemental Specifications for Contract No. 921-91
- f. Workmen's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne
- g. Non-Discrimination of Labor, General Ordinance No. G-34-78 (as amended)
- h. Prevailing Wage Scale
- i. Performance and Guaranty Bond
- j. Labor and Material Payment Bond
- k. Minority/Female Employment Hourly Utilization
- l. Right-of-Way Cut Permit
- m. Comprehensive Liability Insurance Coverage
- n. EBE Declaration Rider

ARTICLE 9: GUARANTEE OF WORKMANSHIP

At the time of execution of this Contract, the **CONTRACTOR** shall furnish a Performance and Guaranty bond in favor of the City of Fort Wayne in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of one (1) year following written acceptance of the work by the **OWNER**.

ARTICLE 10: INDEMNITY

CONTRACTOR shall furnish to **OWNER** within ten (10) days of the date hereof, a certificate from an insurer acceptable to **OWNER** showing personal property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to **OWNER** and in accordance with the Statutes of the State of Indiana.

ARTICLE 11: ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the **CONTRACTOR** and the **OWNER** under the provisions of this Contract shall be subject to the decision of the Director of Board of Public Works & Safety of the **OWNER**, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications or other phases of the work covered by this contract will be permitted except on prior written authorization by the Board of Public Works & Safety.

ARTICLE 12: COMPLETION DATE

The **CONTRACTOR** agrees to complete the work specified in the contract within 60 consecutive calendar days after having been ordered by the **OWNER** to commence work under this contract.

ARTICLE 13: COUNCILMANIC APPROVAL

This agreement, although executed on behalf of the **OWNER** by the Mayor and Board of Public Works & Safety of the City of Fort Wayne, Indiana, shall not be binding upon the **OWNER** unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

ARTICLE 14:

This contract is governed by the Laws of the State of Indiana.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CITY OF FORT WAYNE

CONTRACTOR: CROSBY EXCAVATING, INC.

By Paul Helmke
Paul Helmke, Mayor

By Steven C Crosby President

BOARD OF PUBLIC WORKS & SAFETY

Charles Layton
Charles Layton, Director
Public Works

Katherine A. Carrier
Katherine A. Carrier, Member

C. James Owen
C. James Owen, Member

ATTEST:

Patricia J. Crick
PATRICIA J. CRICK

Read the first time in full and on motion by Long, seconded by _____, and duly adopted, read the second time by title and referred to the Committee on City Clerk (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Common Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____ the _____ day of _____, 19____, at _____ o'clock _____ M., E.S.T.

DATED: 4-28-92

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Long, seconded by _____, and duly adopted, placed on its passage. PASSED ~~LOST~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>9</u>			
BRADBURY	<u>✓</u>			
EDMONDS	<u>✓</u>			
GIAQUINTA	<u>✓</u>			
HENRY	<u>✓</u>			
LONG	<u>✓</u>			
LUNSEY	<u>✓</u>			
RAVINE	<u>✓</u>			
SCHMIDT	<u>✓</u>			
TALARICO	<u>✓</u>			

DATED: 5-26-92

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING) ORDINANCE RESOLUTION NO. D-90-92 on the 26th day of May, 1992

ATTEST:

(SEAL)

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Thomas P. Henry
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 28th day of May, 1992, at the hour of 3:00 o'clock P, M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 29th day of May, 1992, at the hour of 11:45 o'clock A, M., E.S.T.

PAUL HELMKE
PAUL HELMKE, MAYOR

Admn. Appr.

TITLE OF ORDINANCE: Sewer Contract 921-91, Timbers Drive Sanitary Sewer

DEPARTMENT REQUESTING ORDINANCE: Board of Public Works

SYNOPSIS OF ORDINANCE: Sewer Contract 921-91 is for the following: Beginning at an existing manhole located 20± LF East of the centerline intersection of Sand Point Road and Timbers Drive; thence East 400± LF to a proposed manhole located 35± LF South and 420± LF East of the centerline intersection of Sand Point Road and Timbers Drive; said sewer shall be 8" in diameter. Crosby Excavating, Inc., is the contractor.

EFFECT OF PASSAGE: Sanitary sewer to be installed on Timbers Drive.

EFFECT OF NON PASSAGE:

D-92-04-37

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$12,807.00

ASSIGNED TO COMMITTEE:

BILL NO. S-92-04-37

REPORT OF THE COMMITTEE ON
CITY UTILITIES

DAVID C. LONG, CHAIR
SAMUEL J. TALRAICO, VICE CHAIR
LUNSEY, BRADBURY

WE, YOUR COMMITTEE ON CITY UTILITIES TO WHOM WAS
REFERRED AN (ORDINANCE) (~~RESOLUTION~~) approving SEWER
CONTRACT 921-91, TIMBERS DRIVE SANITARY SEWER between CROSBY
EXCAVATING, INC. and the City of Fort Wayne, Indiana, in connection
with the Board of Public Works

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(ORDINANCE) (~~RESOLUTION~~)

DO PASS

DO NOT PASS

ABSTAIN

NO REC

<u>David Long</u>			
<u>Sam J. Talraico</u>			
<u>Janet Bradbury</u>			

DATED: 5-26-92

Sandra E. Kennedy
City Clerk